

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

MAY 24 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of the Commission's Rules
Regarding Modification of
FM and AM Authorizations

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MB Docket No. _____
RM-10960

COMMENTS OF CLEAR CHANNEL COMMUNICATIONS, INC.

Pursuant to the Commission's Public Notice of April 22, 2004,¹ Clear Channel Communications, Inc. ("Clear Channel") hereby submits its comments on the March 5, 2004 Petition for Rulemaking (the "Petition") by First Broadcasting Investment Partners, LLC ("First") regarding reformation of the Commission's broadcast allotment procedures.

I. INTRODUCTION

Clear Channel is the nation's largest radio station owner and operator, owning or programming more than 1,200 radio stations in local markets throughout the United States. Like First, Clear Channel is committed to maximizing its radio stations' technical quality, coverage, and ability to serve the public. Clear Channel seeks frequently to modify and improve its stations' technical facilities in furtherance of that objective. From time to time, it utilizes the Commission's FM allotment process to pursue community of license changes and other modifications that both enhance its stations' technical service and improve overall spectrum

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¹ Public Notice, "Consumer & Governmental Affairs Bureau—Reference Information Center—Petition for Rulemaking Filed," Report No. 2657 (Apr. 22, 2004)

efficiency. Clear Channel has successfully prosecuted a number of allotment change proposals through the rulemaking stage to effectuation, and several other such proposals are still pending.

Clear Channel shares First's overall concerns about the current inefficiencies and delays in the staff's processing of allotment cases. As discussed below, Clear Channel believes that one critical component of remedying the situation—an aspect not discussed in First's Petition—is the deterrence of literally hundreds of speculative rulemaking proposals which divert already-scarce staff resources and in many cases impede legitimate proposals that would enhance station service and improve the overall allotment scheme. As to First's specific proposals, Clear Channel generally supports steps such as a recognition that removal of a community's only local service might in fact serve the public interest in some cases, a simplified approach to removing non-viable FM allotments, and a one-time settlement window to ease the backlog of pending cases. Clear Channel believes, however, that deterrence of speculative rulemaking proposals would make unnecessary the more radical steps proposed by First, such as allowing community of license changes through minor modification applications and altering the existing Class C0 reclassification rules.

II. DISCUSSION

A. The Commission Should Act to Deter Speculative Rulemaking Proposals By Requiring Payment of the Rulemaking Fee At the Time of Filing

Under the Commission's current rules, no fee is required to file an allotment petition for rulemaking or counterproposal. While payment of a rulemaking fee (currently \$2,210) is required where an existing station utilizes the rulemaking process to obtain a change in community of license or a higher class of channel, the fee is payable only at the time an

application (usually FCC Form 301) to implement the allotment change is filed.² With respect to new stations, the Commission charges a filing fee (currently \$2865) for applications to construct stations on vacant FM allotments—but, again, no fee is charged for the filing of a proposal to add a vacant allotment in the first instance.

Because there is no “front end” fee for filing any proposal (or counterproposal) to amend the FM Table of Allotments, it has been entirely too easy for certain parties to produce and file dozens, even hundreds, of petitions for new FM allotments on which the proponents cannot and do not intend to construct a station, notwithstanding their nominal (and easily made) statements of “interest” in doing so. Similarly, parties need pay no filing fee in order to file counterproposals having little or no chance of success on the merits, but which are filed merely to delay legitimate allotment proposals which the counterproponent may not wish to see effectuated. Such speculative rulemaking proposals have at least two major harmful effects. First, they divert the staff’s time and resources from processing and acting on sincere allotment proposals that will genuinely improve stations’ technical service and enhance the overall efficiency of the broadcast spectrum. Second, because they must be protected by subsequently filed proposals, these speculative petitions and counterproposals have a preclusive effect on the same kinds of *bona fide* improvement proposals. These effects immeasurably harm both the efficiency and the integrity of the Commission’s allotment process.

Clear Channel thus believes that any reform of the Commission’s allotment procedures must include the deterrence of speculative rulemaking proposals. In Clear Channel’s view, this objective can be accomplished in large degree by the simple step of requiring payment of the requisite rulemaking fee *at the time of filing* any initial rulemaking petition or counterproposal to

² The rulemaking fee is payable in addition to the separate filing fee associated with the application (currently \$800 for an FCC Form 301).

amend the FM Table of Allotments. Such a requirement will deter the filing of speculative and frivolous allotment proposals and will free up staff resources to process *bona fide* proposals, thus speeding the introduction of new and improved radio service to the public. It will also simplify the processing of allotment cases by reducing or eliminating most, if not all, of the non-sincere petitions that currently complicate the processing of *genuine* proposals. In short, requiring payment of the required rulemaking fee at the time of filing any original proposal or counterproposal to amend the FM Table of Allotments will do much to ease the backlog and the associated delays in the staff's disposition of allotment cases.³

B. Comments on Specific Proposals by First

Clear Channel supports a number of the specific proposals advanced in First's Petition. For instance, Clear Channel agrees with First that a flat prohibition on reallocation of a community's only local service may needlessly preclude service improvements that serve the overall public interest, particularly where the former community would retain adequate radio service, the reallocation would provide a first local service to another community, and the station would serve more listeners at the new community.⁴ Clear Channel also supports First's suggestion of a simplified procedure to remove vacant, non-viable FM allotments from the

³ Clear Channel believes the Commission has ample statutory authority to take this step. Under the statute, the Commission already imposes fees on proposals to change community of license or upgrade a station's class through the allotment rulemaking process. It also imposes fees on other non-application filings such as requests for special temporary authority and hearing fees. Moreover, even if the Commission were to decide it lacks statutory authority to impose filing fees on allotment petitions and counterproposals at the time of filing, it could require the filing of an implementing FCC Form 301 application simultaneously with the rulemaking petition or counterproposal, and impose the rulemaking fee on the Form 301 filing.

⁴ See Petition at 14-18. Moreover, in some cases a station's current community of license may actually no longer meet the attributes of a "community" for Section 307(b) purposes (for example, the community may subsequently have been annexed into a larger locality and no longer exists independently). In such cases, there would be no reason to prohibit reallocation of the "non-community"'s only local service.

Table.⁵ Regarding First's proposal for a one-time settlement window to resolve pending allotment rulemaking proceedings, Clear Channel generally supports steps that would ease the glut of cases currently before the staff. It is deeply concerned, however, about any procedure that might incentivize parties to file speculative rulemaking proposals or counterproposals for "greenmail" purposes. Thus, in establishing any settlement window during which the Section 1.420(j) limits on consideration are waived, the Commission should make very clear that such a window is one-time only, is applicable only to *pending* cases, and that no future windows will be opened.

1. **Changes in Community of License by Application**

While Clear Channel is generally supportive of First's Petition, it feels that some of the Petition's suggested changes present problems which would outweigh the benefits. The first of these is the adoption of rules permitting licensees to propose a change in AM and FM community of license on a first-come, first-served basis through the filing of a minor modification application.⁶ While such an action doubtless would streamline the process for community of licenses changes, Clear Channel believes it would overly harm the rights of counterproponents (and mutually exclusive applicants in the AM service) and the integrity of Section 307(b) of the Communications Act. Expedience should not be a reason for undermining the fair and efficient distribution of radio service mandated by Section 307(b).

For decades the Commission has considered proposed changes in FM community of license in the context of a rulemaking proceeding that guarantees an opportunity for the filing of counterproposals. In the AM service, it has treated community of license changes as major

⁵ See Petition at 19-23.

⁶ *Id.* at 8-13, 27-30.

modifications subject to mutually exclusive applications. Such competing proposals often are found to propose an even more preferential arrangement of allotments than did the original proponent, including the provision of local radio service to communities more deserving of local service than those initially proposed.⁷ Indeed, while the Commission initially accepted major modification applications for community of license changes by AM expanded band stations outside designated filing windows, even that practice has been frozen.⁸

It is true, as First notes, that since 1993 applicants have been permitted to seek changes in FM station class or channel through minor change applications. But in refraining from extending this procedure to changes in community of license, the Commission did not primarily cite conflicts with the contingent application rule and its lack of experience in processing “one-step” applications. Rather, the Commission was concerned that allowing actions such as community of license changes by application “involve[s] potentially much more significant changes in the preclusive effects of the applications involved” because “the scope of the proposal is not limited by the need to continue to provide principal community coverage to the station or stations’ community of license. The greater the preclusive effects, the greater the potential impact on third parties.”⁹ That consideration still holds true. Because proposed changes in community of license by definition are not limited by the need to retain the requisite principal community coverage to the existing community, they can involve facility changes of great magnitude that, if

⁷ Clear Channel acknowledges that, as proposed by First, a Section 307(b) showing would be required of a minor change applicant for a new community of license. In a first-come, first-served context, however, the Commission’s consideration of the Section 307(b) showing would be limited to whether the proposed community before it met minimal Section 307(b) standards. It would not consider whether other competing proposals might be preferential from a Section 307(b) perspective.

⁸ See Public Notice, “Freeze Announced on the Filing of AM Expanded Band Major Change Applications,” 17 FCC Rcd 1806 (2002)

⁹ Amendment of the Commission’s Rules To Permit FM Channel and Class Modifications by Application, 8 FCC Rcd 4735, 4740 (1993).

entitled to cut-off protection as of the time of filing, would have far more widespread preclusive effects on potential competing proposals. Allowing community of license changes by minor modification application would, in Clear Channel's view, result in harm to the rights of would-be competing proponents and to an optimal arrangement of allotments under Section 307(b) that outweighs the benefits of such an action, particularly if the Commission takes simpler steps to deter frivolous rulemaking proposals.

2. Streamlined Procedure for Reclassification of Class C0 Stations

First suggests that the existing procedures for reclassification of certain Class C FM stations to Class C0 enable "triggered" stations to indefinitely delay reclassification, filing for Class C facilities knowing they cannot be constructed. In adopting the Class C0 reclassification rules in 2000, however, the Commission carefully considered the various positions of commenters regarding the reclassification timetable. It determined that the reclassification procedures would "provide affected Class C stations with a reasonable opportunity to preserve their Class C status, while ensuring that new and improved FM service may be brought to the public as expeditiously as possible."¹⁰ The Commission was also expressly mindful of the potential for abuse of the process, warning "triggered" Class C licensees that "foot dragging" in the process would result in dismissal of their Class C applications.¹¹

Clear Channel has seen no evidence that the reclassification rules are being abused in this fashion. Construction of Class C facilities is an expensive process which in most cases requires the construction of a very tall tower at great cost. Many Class C licensees, particularly in smaller markets, may genuinely desire to build full Class C facilities but be unable, for economic or

¹⁰ 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, 15 FCC Rcd 21649, 21665, ¶ 31 (2000).

¹¹ Id. at 21666, ¶ 32

other reasons, to do so immediately. It is difficult to distinguish Class C applicants with a genuine intent to build their proposed facilities from those who are acting to delay the reclassification process. As noted above, the Commission carefully considered the appropriate reclassification timetable when it adopted the Class C0 rules four years ago. The truncated procedure that First suggests would, in Clear Channel's view, unfairly deprive many sincere Class C applicants of the time they need to construct the facilities they propose. Again, Clear Channel believes that this harm outweighs the benefits to FM allotment proponents from streamlining the Class C0 reclassification procedures.

CONCLUSION

Clear Channel commends First for bringing to the Commission's attention the great need for reform of the broadcast allocation process. It appreciates the opportunity to express the above views on First's Petition. Clear Channel looks forward to the comments and suggestions of other affected parties and to the Commission's prompt initiation of a rulemaking proceeding on this subject.

Respectfully submitted,

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By: 

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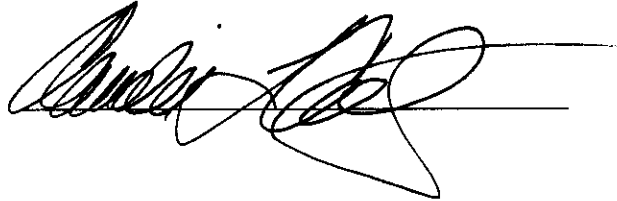
May 24, 2004

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent this 24th day of May, 2004, by first class United States mail, postage prepaid, to the following:

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